Supreme Court, U.S.
FILED
FEB 25 1987
JOSEPH F. SPANIOL, JR.
CLERK

No. 86-1285

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1986

JULIUS JONAS JODELE

v.

COMMISSIONER OF INTERNAL REVENUE

ON
PETITION FOR WRIT OF CERTIORARI
TO THE
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

SUPPLEMENTAL APPENDIX

Julius Jonas Jodele
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PETITIONER PRO SE

EDITOR'S NOTE

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UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

August 5, 1986

Julius Jonas Jodele, Petitioner-Appellant,	)
	) No. 85-7718
v.	)
	) MEMORANDUM*
Commissioner of Internal Revenue, Respondent-Appellee.	)

Petition to Review a Decision of the United States Tax Court

Submitted July 23, 1986**

Before: SNEED, ALARCON, and NOONAN, Cicuit Judges.

Julius Jonas Jodele appeals in pro se from the tax court's dismissal of his petition for redetermination of a tax deficiency for failure to state a claim. Jodele contends that the dismissal of his petition for failure to state a claim

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 21.

** The panel finds this case appropriate for submission wihtout oral argument pursuant to Fed. R. App. P. 34(a) and 9th Cir. R. 3(f).

denied him due process because he did not receive an oral hearing.

I.

A decision to dismiss for failure to state a claim upon which relief can be granted is reviewable de novo. Fidelity Financial Corp. v. Federal Home Loan Bank of San Francisco, No. 84-2634, slip op. at 6 (9th Cir. June 27, 1986). This court reviews decisions of the tax court on the same basis as it reviews decisions entered after civil bench trials in the district court. Mayors v. Commissioner, 785 F. 2d 757, 759 (9th Cir. 1986) (citing Commissioner v. Duberstein, 363 U.S. 278, 290-91 (1960).

II.

On August 12, 1985, the Commissioner filed a motion to dismiss Jodele's peti-

tion for redetermination of a tax deficiency for failure to state a claim. The Commissioner asserted that Jodele had not denied receipt of the wage amounts imputed to him or alleged justiciable facts as to to why those amounts do not constitute income. Tax Court Rule 34(b) (5). Instead, according to the Commissioner, Jodele made frivolous arguments which have been repeatedly denied by the courts. Jodele then moved to dismiss based on the Commissioner's lack of jurisdiction to consider the case.

On October 4, 1985, the tax court denied Jodele's motion, granted the Commissioner's motion to dismiss and awarded damages to the government of $5,000 under 26 U.S.C. § 6673 for frivolous petition.

III.

There is no constitutional right to oral

argument. Federal Communications Commission v. WJR, the Goodwill Station, Inc., 337 U.S. 265, 276 (1949). Rather, the right to an oral hearing is decided on a case by case basis. Id. "[T]he Constitution does not require oral argument in all cases where only insubstantial or frivolous questions of law, or indeed even substantial ones, are raised." Id.; see Dredge Corp. v. Penny, 338 F.2d 456, 462 n.14 (9th Cir. 1964) ("The opportunity to be heard orally on questions of law is not an inherent element of due process, even where substantial questions of law are involved.").

While it is true that Jodele did not receive an oral hearing, he had ample opportunity to present his arguments to the tax court on the questions of law raised by the Commissioner's motion to dismiss his petition for failure to state a cognizable

claim. Jodele availed himself of the right to petition the tax court for a redetermination, see 26 U.S.C. § 6213, and of the opportunity to oppose the Commissioner's motion to dismiss. He also filed his own notion to dismiss, with a supporting memorandum. Jodele was not denied due process simply because he did not receive an oral hearing.

IV.

The Commissioner requests sanctions on appeal. Sanctions are warranted in this matter.

This court has discretion to impose attorney fees and single or double costs as sanctions for bringing a frivolous appeal. Fed. R. App. P. 38; 28 U.S.C. § 1912; Olson v. United States, 760 F.2d 1003, 1005 (9th Cir. 1985); Nunley v. Commissioner, 758 F.2d 372, 373 (9th Cir. 1985.

An appeal is frivolous when the result is obvious or the argument on appeal wholly lack merit. DeWitt v. Western Pacific Rail, 719 F.2d 1448, 1451 (9th Cir. 1983). Here, Jodele was given ample opportunity to present his arguments to the tax court despite the fact that he did not receive an oral hearing. The result was obvious based on longstanding precedent. Jodele has not challenged the merits of the tax court's decision that his petition failed to state a claim upon which relief could be granted. The Commissioner requests that sanctions approximating the average costs and attorney's fees for this type of cas be awarded ($1,246). Sanctions in the amount of $1,000 are ordered imposed against the petitioner.

AFFIRMED.

UNITED STATES TAX COURT
WASHINGTON, D.C. 20217

October 4, 1985

Julius Jonas Jodele, Petitioner,	)	
	)	Docket No.
v.	)	
	)	19185-85
Commissioner of Internal Revenue, Respondent.	)	

MEMORANDUM SUR ORDER

This case was assigned to Special Trial Judge D. Irvin Couvillion for consideration and ruling pursuant to the provisions of section 7456(c) and (d)[1] and Rule 180.[2] It is before the Court on respondent's motion to dismiss for failure to state a claim upon which relief can be granted, filed on August 12, 1985, pursuant to Rule 40. Also under consideration is a motion to dismiss for lack of jurisdiction filed

1 All section references are to the Internal Revenue Code of 1954, as amended, unless otherwise indicated.

2 All rule references are to the Tax Court Rules of Practice and Procedure.

by petitioner on September 3, 1985, seeks damages against petitioner under section 6673.

On March 26, 1985, respondent issued a notice of deficiency to petitioner in which respondent determined deficiencies in Federal income taxes and additions to tax as follows:

		Additions to Tax		
Year	Deficiency	Section 6653a(1)	Section 6653a(2)	Section 6654
1980	$6,458.68	$327.43	--	$397.50
1981	$6,462.00	$323.10	*	$495.15
1982	$8,050.00	$402.50	**	$783.74

* 50% of the interest due on $6,462.00.
** 50% of the interest due on $8,050.00.

The above determinations are based upon adjustments to petitioner's taxable income wherein respondent included in petitioner's income wages, taxable unemployment compensation benefits, and interest, items which had not been reported by petitioner.

The petition for redetermination of these proposed adjustments was filed on June 20, 1985. The petition recites petitioner's mailing address as 10717 Wolcott Place, Mission Hills, California 91345-2147. A motion for jury trial was filed by petitioner concurrently with his petition and this motion was denied July 2, 1985.

Reapondent's motion to dismiss is based upon the contention that the petition fails to allege facts upon which petitioner relies as his case as required by Rule 34(b)(4) and (b)(5).

Petitioner's motion to dismiss is based upon the contention that respondent has no jurisdiction to assess or to issue a notice of deficiency.

Addressing respondent's motion first, the Court finds that the petition does not

address itself to the proposed adjustments in the notice of deficiency. Petitioner's alleged errors and the facts to support such errors are legal conclusions such as, for example, that there is no definition of "income" in the Internal Refenue Code, that there is no requirement in the Internal Revenue Code that one must file a return, that filing a return is voluntary and petitioner has not volunteered to "self-assess himself," that petitioner has not been assessed by anything of known tangible value which qualifies as income since "income," as he alleges, is "gain" or "profit" and he had neither during the years in question.

The objections raised by petitioner have no merit. More importantly, petitioner has filed a petition which fails to state a case under the Rules of this Court.

Rule 34 (b) (4) requires a petitioner challenging a notice of deficiency to allege "clear and concise assignments of each and every error which petitioner alleges to have been committed by the Commissioner in the determination of the deficiency or liability." Rule 34 (b) (5) requires petitioner to allege "clear and concise lettered statements of the facts on which petitioner bases the assignments of error * * *."

We find that the general allegations of error by petitioner do not comport with the requirements of Rule 34(b)(5) and, therefore, no justiciable errors have been alleged with respect to respondent's determination of deficiency. Contrary to petitioner's assertions, taxpayers with taxable income are required by law to file Federal income Tax returns. Section 6012. Under section 6651 and 7203, taxpayer who

fail to file returns may be subject to civil additions to the tax and prosecution for criminal offenses. Therefore, the matter of filing tax returns and paying taxes is not voluntary as petitioner claims. Moreover, taxable income is not limited to the narrow definition of "gain" or "profit" as petitioner contends. Gross income means all income from whatever source derived including, but not limited to, wages. It includes income realized in any form, whether in money, property, or services. Section 61. Income as defined in the Sixteenth Amendment is "gain derived from capital, from labor, or from both combined." Eisner v. Macomber, 252 U.S. 189, 207 (1920). Income includes all realized accessions to wealth. Commissioner v. Glenshaw Glass Co., 348 U.S. 426 (1955). Finally, petitioner's claim that he was not previously assessed is without

merit. Under section 6213, respondent is expressly prohibited from making an assessment against a taxpayer while the delays for filing with this Court are pending and this prohibition continues until such time as a decision by this Court becomes final.

We conclude, therefore, that the errors alleged by petitioner are all legal conclusions which have long ago been resolved contrary to petitioner's contentions. The petition, therefore, fails to state a case.

Petitioner's motion to dismiss for lack of jurisdiction is based on the contention that respondent has no "jurisdiction" to assess him nor to issue a notice of deficiency. We agree with petitioner that respondent was without authority to assess him for the determined deficiency or additions to tax under section 6213. However,

respondent is authorized under the law to issue the notice of deficiency for the determined taxes and additions to tax. Section 6213. Petitioner's motion, therefore, is without merit. We find that respondent issued a valid notice of deficiency, a timely petition was filed with this Court and, therefore, the Tax Court has exclusive jurisdiction of this case. Sections 6212, 6213, 6214. The determinations made by respondent in the notice of deficiency are presumed correct; the burden of proof is on petitioner to show that the derterminations are wrong and the imposition of the burden of proof is constitutional. Welch v. Hevering, 290 U.S. 111 (1933); Rockwell v. Commissioner, 512 F.2d 882, 887 (9th Cir. 1975); Rule 142 (a).

We conclude, therefore, that the petition in the instant case does not comply with Rule 34(b)(4) and (5) and, according-

ly, respondent's motion to dismiss is granted. Petitioner's motion is denied.

Respondent, in his motion to dismiss, also requested the imposition of damages under section 6673.[3] As set forth in the statute, we may award damages where taxpayers bring frivolous and meritless issues or the proceedings are instituted primarily for delay. Grimes v. Commissioner, 82 T.C. 235, 239 (1984); Beard v. Commissioner, 82 T.C. 766, 781 (1984). See also Sydnes v. Commissioner, 74 T.C. 864, 870-873 (1980), affd. 647 F.2d 813 (8th Cir. 1981). Based on the petition

[3] SEC. 6673.

Whenever it appears to the Tax Court that proceedings before it have been instituted or maintained by the taxpayer primarily for delay or that the taxpayer's position in such proceedings is frivolous or groundless, damages in an amount not in excess of $5,000 shall be awarded to the United States by the Tax Court in its decision. Damages so awarded shall be assessed at the same time as the deficiency and shall be paid upon notice and demand from the Secretary and shall be collected as a part of the tax.

filed in this case, we conclude that petitioner's position is frivolous and completely without merit, and we further conclude that these proceedings were initiated and maintained by the petitioner primarily for delay. At no time has petitioner made a good faith attempt to contest the adjustments set forth in the notice of deficiency. Therefore, damages in the amount of $5,000 are hereby awarded to the United States pursuant to section 6673.

D. Irvin Couvillion
Special Trial Judge

Certificate of Service

It is hereby certified that service of a true and correct copy of the petition for writ of certiorari has been made on the Solicitor General by mailing a copy thereof on the 11th day of February, 1987, and a copy of this supplemental appendix on on the 25th of February, 1987, in an envelope, with 1st class postage prepaid, properly addressed to him as follows:

Solicitor General
Department of Justice
Washington, D.C. 20530

Julius Jonas Jodele

State of California
County of Santa Clara

Sworn and subscribed to me this 24t day of February, 1987, and before me personally appeared Julius Jonas Jodele to me well known and known to me to be the person who executed this document.

Michelle A. Carbajal
Notary Public

My Commission Expires:

OFFICIAL SEAL
MICHELLE A CARBAJAL
NOTARY PUBLIC - CALIFORNIA
SANTA CLARA COUNTY
My comm. expires JUN 1, 1990